

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REED COLLEGE
Employer

and

19-RC-213177

STUDENT WORKERS COALITION – LOCAL 1
HOUSING ADVISERS
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.¹

¹ In denying review, we note that the Employer is not at this time contesting either the Regional Director's finding that the Housing Advisers are employees or the scope of the unit. The Employer is contesting only the Regional Director's eligibility formula. Contrary to the Employer's claims, the Regional Director did not devise a "special" eligibility formula, but instead applied the Board's standard eligibility criteria.

Given that the Employer has merely stated its possible intention to file a subsequent request for review of the Regional Director's findings regarding the employee status of the Housing Advisers and the scope of the unit, Member McFerran finds it unnecessary at this time to decide whether such a request would be proper under Sec. 102.67(i)(1) of the Board's Rules and Regulations.

The Employer nevertheless contends that it was prejudiced because it was prevented from litigating its proposed alternative eligibility formula. On this count, we clarify the Hearing Officer's statement that parties are not permitted to litigate "eligibility formulas" under the Board's representation-case rules. Under the Board's Rules, parties may not litigate such election details as the "eligibility period" date, which ordinarily involves a ministerial eligibility determination based on whether someone was employed during a recent payroll period. See Sec. 102.66(g)(1). However, in some cases, such as those involving intermittently employed employees, the "eligibility period" is merely one part of a broader substantive question of voter eligibility, which may involve considerations of both frequency and recentness of work for the employer; in those cases an employee's presence or lack thereof on a recent payroll may not decisively establish whether he or she has an adequate connection to the bargaining unit to warrant inclusion. In such cases, Regional Directors undoubtedly have discretion to allow pre-election litigation over questions of eligibility, including any proposed eligibility formula. See generally Sec. 102.64(a).

In the present case, however, the Employer has not offered any reason why the standard eligibility formula set forth by the Regional Director – encompassing employees on the payroll ending February 23, 2018 -- is inappropriate for the unit of Housing Advisers. Further, the Employer (1) admits that its proposed alternative eligibility formula "was based on the College's position that the smallest appropriate unit must include additional student positions," and that its proposed formula was meant to apply to these positions not included in the unit by the Regional Director, yet, as we note above, (2) has not now requested review of the Regional Director's finding that the petitioned-for unit need not include additional student positions. Further, there is no dispute that the Employer was permitted to fully litigate the

The Employer's request for extraordinary relief is denied as moot.

MARVIN E. KAPLAN,	CHAIRMAN
LAUREN McFERRAN,	MEMBER
WILLIAM J. EMANUEL,	MEMBER

Dated, Washington, D.C., March 22, 2018.

appropriateness of the unit at the hearing. Under these circumstances, we find that the Employer cannot show any prejudice by not being permitted to litigate an eligibility formula that was explicitly premised on its position on an issue not currently before the Board. In addition, the Employer's request for review makes no attempt to explain which (if any) employees would be improperly enfranchised or disenfranchised by the standard eligibility criteria, and thus here too has not demonstrated any prejudice.

Chairman Kaplan and Member Emanuel express no view with respect to whether they agree or disagree with revisions made by the Board's Election Rule, but they agree that it applies here and warrants denial of the Employer's request for review and extraordinary relief.